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Michael Gennaco
Office of Independent Review

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Toward Increased Transparency in the Jails and Prisons: Some Optimistic Signs

Michael Gennaco^{*}

On April 20, 2004, inmate Raul Tinajero was killed in his cell in Los Angeles Men's Central Jail,¹ the largest county jail in the United States.² The Tinajero killing attracted notoriety for two reasons: first, it was a bold, elaborately premeditated killing of a witness by the murderer he had just testified against; and second, it was the fifth inmate-on-inmate homicide in the downtown jail complex within a six-month period.³

Shortly after Tinajero was killed, Los Angeles County Sheriff Lee Baca met with the Los Angeles County Sheriff's Department's (LASD) Board of Supervisors to report not only on the murder of Tinajero, but to provide detailed preliminary facts regarding the four additional inmate homicides that had occurred in Los Angeles County jails since October 2003.⁴ In addition, Sheriff Baca opened his jails and personally conducted a tour of the facilities for both the media and local elected officials so that they could view first-hand the current jail environment.⁵

In addition to responding publicly to the inmate homicides, the sheriff became personally engaged in steering the investigations of

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1. Andrew Blankstein et al., *Witness Found Dead in Jail Cell*, L.A. TIMES, Apr. 30, 2004, at B1.

2. Sue Fox et al., *Lapses at Jail Led to Inmate's Killing*, L.A. TIMES, May 15, 2004, at B1.

3. Andrew Blankstein & Richard Winton, *Baca Assailed Over Jail Killings*, L.A. TIMES, May 13, 2004, at B1.

4. Fox et al., *supra* note 2.

5. Matt Krasnowski, *L.A. Sheriff Lets Media in Jails*, SAN DIEGO UNION-TRIB., May 20, 2004, at A4.

these murders to ensure the accountability of his employees. A full investigation into each of these murders was launched in a timely manner.⁶

The Office of Independent Review (OIR),⁷ the oversight body for the LASD, was instrumental in shaping the department's administrative investigation. At the outset of each of the five investigations, an OIR attorney sat down with the Internal Affairs investigators from the Sheriff's Department to help map out the investigative plan. During the course of the fast-moving investigations, OIR received regular debriefings on the investigators' progress and continued to provide input. As the investigations neared completion, OIR requested that additional areas of inquiry be pursued. Once the investigations were completed, OIR met with the departmental heads of the jail and made recommendations regarding the identification of potential violations of policy, the disposition of each alleged violation, and, when founded, the level of discipline to be imposed.

At the conclusion of the internal investigations, OIR issued a forty-one page public report that identified employee shortcomings in each of the murders that may have made it easier for the inmate murders to occur.⁸ In its report, OIR detailed the nature and level of discipline of over twenty-five department employees.⁹ The report also identified systemic failures and recommended that they be addressed in order to reduce the likelihood of future killings.¹⁰ Upon the release of its report, OIR made itself available to the media to further discuss these relevant issues.

The Sheriff's Department's handling of the inmate murder cases demonstrates an approach to addressing violence and misconduct in

6. Andrew Blankstein, *Suspect in Witness' Death Roamed Jail for Hours*, L.A. TIMES, May 12, 2004, at A1.

7. County of Los Angeles Office of Independent Review, <http://www.laoir.com> (last visited June 3, 2006).

8. OFFICE OF INDEP. REVIEW, OIR EVALUATIONS AND RECOMMENDATIONS CONCERNING SHERIFF'S DEPARTMENT INVESTIGATIONS OF FIVE CUSTODY HOMICIDES OCCURRING BETWEEN OCT. 21, 2003 AND APRIL 20, 2004 (2004), <http://www.laoir.com> (follow "Reports" hyperlink; then follow "OIR Public Report on Los Angeles County Jail Homicides" hyperlink).

9. *Id.*

10. *Id.* at 2.

the jails that should be replicated elsewhere; namely, one that incorporates the concerns, perspectives, and contributions of outside entities. Too often in similar scenarios, issues such as employee misconduct, safety failures, and violence have been addressed behind closed doors and with a “circle the wagons” mentality, if they were addressed at all. Leaders of the organizations responsible for maintaining the prisons and jails have not been responsive to the public and have not openly reported the facts and conclusions generated by internal inquiries. Moreover, even if the agency provides generic assurances that a thorough investigation was conducted and “appropriate action taken,” the lack of supporting detail does little to inform the public about whether any action, in fact, taken was actually appropriate.

In sharp contrast, this level of detail and transparency was provided in the Los Angeles County inmate murder investigations. This meant that interested members of the public had the opportunity to make an informed assessment for themselves based on the specific facts and information provided about the appropriateness of the department’s actions.

I. THE NEED FOR IMPROVED INTERNAL RECORDS WITHIN THE PRISON AND JAIL SETTINGS

In order for the public to be adequately equipped to assess the way in which important issues such as violence, safety failures and employee misconduct allegations are addressed in our jails and prisons, more developed records of such incidents need to be maintained and the ability to access those records expanded. Virtually all jails and prisons in the United States have instituted policies requiring documentation of inmate complaints and the way in which those complaints must be handled.¹¹ Similar documentation

11. For example, the corrections departments in California, Arizona, Nevada, and New York have similar policies in place to deal with inmate complaints. *See, e.g.*, 37 TEX. ADMIN. CODE § 283.3 (2006); ARIZ. DEP’T OF CORR., DEPARTMENT ORDER MANUAL, at ch. 800, order 802 (n.d.), available at <http://www.azcorrections.gov/Policies/802.htm>; CAL. DEP’T OF CORR. & REHAB., 2005 ADULT TITLE 15 REGULATIONS, at 21 (2005), available at <http://www.cdcr.ca.gov/DivisionBoards/CSA/index.html> (follow “Regulations” hyperlink; then follow “2005 Adult Regulations (PDF)” hyperlink); NEV. DEP’T OF CORR., ADMINISTRATIVE

requirements also exist when inmate disturbances, force incidents, suicides, homicides or other significant events occur.¹² While such requirements are a necessary first step in identifying important issues, much more could be done to improve, and perhaps standardize, the record-keeping of such incidents. It has been our experience that the level of detail and scrutiny of such inquiries and reports is widely disparate among jail and prison systems throughout the country. For example, when a force incident occurs in the prison setting, it is instructive to learn what the investigative and documentation responsibilities are for each system by asking:

- How is the inmate interviewed?
- Are the employees interviewed?
- Are inmate witnesses interviewed?
- By whom?
- Are interviews video or audio taped?
- Who prepares the incident report?
- What written, force-reporting requirements are imposed on the employees using force?
- What physical evidence is collected?
- Are photographs taken of any injuries to either the inmate or employee?
- Are photographs of the scene taken?

REGULATIONS No. 740 (2004), *available at* http://www.doc.ny.gov/ar/ar_toc.php?series=700 (follow the PDF hyperlink for number 740); Memorandum from Alan J. Croce, Chairman, N.Y. State Comm'n of Corr. No. 7-2005 (May 14, 2005), *available at* http://www.scoc.state.ny.us/pdfdocs/chair07_2005.pdf. For a copy of nearly every state's prison grievance policy, see <http://www.law.yale.edu/academics/WoodfordNgo.asp> (last visited June 12, 2006).

12. See, e.g., CAL. DEP'T OF CORR. & REHAB., DEPARTMENT OPERATIONS MANUAL ch. 5 (2000), *available at* <http://www.corr.ca.gov> (follow "Budget & Regulations" hyperlink; then follow "Regulations and Policy Management Branch" hyperlink; then scroll to the bottom of the page and follow "Department Operations Manual (DOM), 2000 Edition" hyperlink; then follow "Chapter 5" hyperlink).

- Are any issues, beyond a review of the force itself, examined (for example, the cell extraction policy)?
- Who reviews the completed force package?
- Is there an external review of the completed force package?

The examination of the protocols that govern internal inquiries into critical events in the jails and prisons is helpful in assessing the level of attention and discernment that the agency devotes to those inquiries. One area of reform worth considering would be the identification of the “best practices” of such internal examinations and a move toward standardization of these best practices throughout prisons and jails nationwide.

Another area of record collection in the jail and prison setting that has been underused are computer-aided tracking systems to monitor employee behavior. Many progressive law enforcement organizations have developed sophisticated tracking systems that enable managers to easily examine the performance history of each police officer in the organization.¹³ The tracking system lists, by employee, notable events such as the amount and types of uses of force; the nature of any disciplinary history; the amount, types and outcomes of complaints against the officer; and the nature, number and outcome of claims and lawsuits filed against the officer. Such information can be an excellent tool by which managers identify issues that may not be discovered through the review of any one incident. The collected information can be a way to afford managers the opportunity to intervene early when they detect trends of behavior among certain employees.

The development of similar tracking systems in the jail and prison system has not received the same level of attention found in police departments. For example, LASD has long been able to track every

13. These tracking systems, also known as “early warning” or “early intervention” systems, have been implemented by several police departments, including the Los Angeles County Sheriff’s Department, the Los Angeles Police Department, the Miami-Dade Police Department, the Pittsburgh Police Department, and the Minneapolis Police Department. *See generally* SAMUEL WALKER, OFFICE OF CMTY. ORIENTED POLICING SERVICES, DEP’T OF JUSTICE, EARLY INTERVENTION SYSTEMS FOR LAW ENFORCEMENT AGENCIES 55–72 (2003), available at <http://www.cops.usdoj.gov/mime/open.pdf?Item=925> (discussing the use and success of “early warning” and “early intervention” systems).

citizen complaint against a patrol deputy, but there was no such ability to similarly track inmate complaints.¹⁴ While we have worked with LASD to improve its system to make the tracking of inmate complaints possible, it is clear that prison and jail employee-tracking systems lag behind police departments.

II. PROVIDING MEANINGFUL ACCESS IN THE CORRECTIONAL SETTING

Even the most progressive internal record-keeping system is of little moment if those records are not used by the organization or made available to the public in a meaningful way. Some correctional agencies and independent entities have created confidential reports on critical areas of prison violence, safety failures or employee misconduct that never saw the light of day.¹⁵

In devising meaningful access streams to this internal information, the competing privacy concerns of prison and jail employees cannot be overlooked. Indeed, these concerns have resulted in legislation throughout the country designed to protect those interests, such as state statutes prohibiting the correctional agency from publicly disseminating the name of any employee subject to a complaint, internal affairs investigation, or administrative discipline. However, even while respecting the privacy interests of employees, there still remain various effective ways to provide meaningful information to the public about the workings of the internal investigative and disciplinary systems.

One fundamental method to ensure meaningful access to the correctional setting is to permit members of the public, or their

14. The Los Angeles County Sheriff's Department uses what is known as the Department Personnel Performance Index (PPI), which provides "systematic recording of data relevant to incidents involving uses of force, shootings, and commendations/complaints regarding Sheriff's Department personnel." Los Angeles County Sheriff's Department Personnel Performance Index User Reference Manual, at 2-1 (1999) (on file with the author and the *Journal of Law & Policy*).

15. For example, the California Office of Inspector General (OIG), the oversight agency for the Department of Corrections, kept its reports confidential until legislation was passed in 2004 giving the public greater access to personnel files and internal investigation information and requiring it to make its reports public. Andy Furillo, *Mixed Year for Prison Legislation*, SACRAMENTO BEE, Aug. 27, 2004, at A3.

designated representatives, meaningful access to the correctional facility itself. Prisons and jails are inherently closed societies, largely shielded from public purview. Too often, however, under the rubric of “security,” managers of these institutions have fended off legitimate entreaties from “outsiders” who wish to learn more by physically exploring behind the prison walls. More recently, this traditional preference for insularity has been undercut by litigation¹⁶ and questioned by some progressive managers.

As a result, in the Los Angeles county jail system for example, the American Civil Liberties Union is permitted regular and routine access to the jails to talk with inmates and inspect jail conditions. Similarly, attorneys at the OIR are provided continual and complete access to the jail facilities. After the jail inmate murders, OIR was provided an office inside the jail perimeter. This principle of allowing outside entities open and continuous access to the prison facility is essential to any meaningful external assessment of how the institution is identifying and handling matters of prison abuse, violence and related issues.

With regard to information about employee misconduct, too often correctional managers interpret privacy provisions unnecessarily broadly in order to limit dissemination of virtually all information impacting on discipline. For example, in California, while the peace officer privacy statute prohibits disclosure of the identity of peace officers subject to discipline, the statute makes explicit that data regarding the number, type or disposition of complaints made against its officers may be publicly disseminated so long as particular identities are not disclosed.¹⁷ However, law enforcement managers almost never take advantage of that provision to publish data about the outcomes of their disciplinary system.

In addition, and perhaps most importantly, prison and jail authorities can balance the need for privacy controls with the importance of full public understanding by providing access to legally authorized, independent oversight groups. The independent oversight groups, such as OIR, can then stand in the shoes of the public to review and evaluate internal records. The oversight groups

16. See *Block v. Rutherford*, 468 U.S. 576 (1984).

17. CAL. PENAL CODE § 832.7 (West 2006).

can use the information in these records not only to fulfill their mandates to ensure thoroughness, fairness and objectivity in the agencies' internal processes, but also to promote the concept of transparency of these records.

Illustrative of this approach is the relationship between LASD and OIR. As the independent group entrusted to oversee the Sheriff's Department, OIR is mandated to shape and review internal investigations of employee misconduct to ensure that those investigations are thorough, fair and effective. After the investigation is completed, OIR is empowered to offer recommendations to LASD on the investigatory outcomes and, on the founded cases, the appropriate level of discipline. In order to achieve these mandates, OIR is provided unlimited access to all internal records created by the department. In addition, OIR is given *carte blanche* to attend and participate in any meeting related to investigatory outcomes.

OIR has believed since its inception that one of its crucial responsibilities is to identify meaningful ways to communicate with the public about the internal investigative and disciplinary process. Accordingly, OIR regularly publishes, on its website, a report which provides a detailed synopsis of every allegation of misconduct it has reviewed.¹⁸ In addition to the synopsis, OIR also includes a list of the charges considered, whether there was a criminal investigation or civil lawsuit related to the incident, and OIR's independent assessment of the investigation and the department's imposition of discipline.¹⁹

OIR's reporting on the disciplinary processes of LASD has opened a window to a long-shuttered world. By reporting openly and in detail about the allegations of misconduct by LASD employees in both jail and patrol assignments, and about how the department has addressed those allegations, the general public is given access to information that has never been provided before. In addition to providing this information to the public OIR has also found that the

18. These reports are released each quarter and are available at <http://www.laoir.com/Reports.html>.

19. See, e.g., OFFICE OF INDEP. REVIEW, REPORT OF OVERSIGHT OF ADMINISTRATIVE DISCIPLINE CASES: OCTOBER THROUGH DECEMBER 2004 (2005), *available at* <http://www.laoir.com/Reports> (follow "Oversight Report—4th Quarter 2004" hyperlink).

reporting function has provided a way for employees of the organization to learn about themselves through a system that had been kept from even their purview. As a result, long-held rumors that had festered within the organization have been dispelled.

In addition to the investigative case reporting, OIR also issues annual public reports that identify trends of employee misconduct and related systemic issues.²⁰ Finally, OIR has the ability to provide detailed reports about significant events, such as inmate homicides, and how the department responded to those events. As a result, even though not one deputy is identified, the public is presented with a detailed analysis of the issues presented, the ways in which the department responded to those issues, and an objective outside assessment of the adequacy of LASD's response.

CONCLUSION

There is a growing but important trend among progressive jail and prison managers to rethink the traditional cloistering of their functions behind prison walls. Record-keeping and investigative protocols have been improved in some organizations. Those protocols should be examined so that "best practices" can be exported throughout the country. Employee tracking systems, used more frequently by police departments, should be adapted and implemented in the jail and prison settings. Jail and prison authorities should be encouraged to open their doors to outside, independent reviewing entities and allow those entities to foster transparency to the outside world. It is through such processes that the managers of these facilities can improve these crucial operations—and ensure the public's confidence along the way.

20. See, e.g., OFFICE OF INDEP. REVIEW, THIRD ANNUAL REPORT (2004), available at <http://www.laoir.com/reports/2005.pdf>.